

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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United States of America,

Plaintiff,

Criminal No. 07-20 (1) (RHK/JJG)

Civil No. 08-5459 (RHK)

**ORDER**

vs.

Van Phong Nguyen,

Defendant.

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Before the Court is Defendant's pro se Section 2255 Motion to vacate his 108-month prison sentence. The sentence was imposed on August 29, 2007, following his plea of guilty to conspiracy to distribute controlled substances. The Motion is without merit and will be denied.

First, it was filed more than one year beyond the one-year statute of limitations. Although he has recently submitted a response to the Government's memorandum and his own affidavit and that of a fellow prisoner (Doc. Nos. 97, 98 and 99), none gives support to his assertion that the failure to comply with the one-year statute of limitations should be excused—there are no extraordinary circumstances beyond his control.

Second, his asserted ineffective assistance of counsel claim must also be denied. The undersigned has reviewed the transcripts of the May 11, 2007 change of plea hearing (Doc. No. 93) and the August 28, 2007 sentencing hearing (Doc. No. 94) and find no support for his assertion that he did not understand the proceedings and was denied the services of an interpreter. He asked and answered questions at both proceedings and

appeared to fully understand the nature and purpose of both proceedings. He also filed a pro se motion seeking a new lawyer. In the undersigned's opinion, Defendant fully understood the proceedings at which he was present, and neither sought nor requested the services of an interpreter.

Based on the foregoing, and upon all the files, records and proceedings herein, **IT IS ORDERED** that Defendant's Section 2255 Motion (Doc. No. 95) is **DENIED**.

Anticipating that Defendant may seek a certificate of appealability, that request is also **DENIED**.

Dated: April 24, 2009

s/Richard H. Kyle  
RICHARD H. KYLE  
United States District Judge